

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 176/2002

Wednesday, this the 19th day of February, 2003.

CORAM :

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN

A.N. Mohanan,
Technical Officer(T-6),
Krishi Vigyan Kendra,
Central Marine Fisheries
Research Institute,
Narakkal-682505.

... Applicant

(By Advocate Mr. K.V. Kumaran)

Vs

1. Officer-in-Charge,
Krishi Vigyan Kendra,
Central Marine
Fisheries Research Institute,
Narakkal-682505,
Ernakulam District.
2. Director,
Central Marine Fisheries
Research Institute,
Cochin-14.
3. Union of India rep. by
Secretary,
Ministry of Agriculture,
New Delhi.

... Respondents

[Mr. P. Jacob Varghese(R 1-2)
Mr. C. Rajendran, SCGSC(R-3)]

The application having been heard on 19.2.2003, the Tribunal on the same day delivered the following :

ORDER

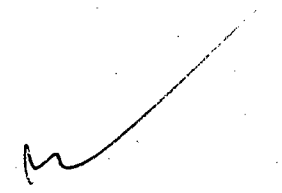
HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN.

The applicant working as Technical Officer(T-6) in the Krishi Vigyan Kendra, Narakkal under the 1st respondent has filed this application under Section 19(3) of the Administrative Tribunals Act, 1985 challenging Annexure A1 order dated 4.1.2002 issued by the 1st respondent directing the applicant to refund a sum of Rs.96,708/- which was wrongly drawn by him towards HRA from 19.10.1995 to 30.11.2001 on the ground that during the said period his spouse had been allotted a Quarter at Ambalamedu by

FACT, a Public Sector Undertaking where his spouse is working as a Teacher in the FACT Ambalamedu High School. The applicant immediately on receipt of the impugned order submitted Annexure A2 reply denying the liability. He was again on 28.1.2002 directed to refund the amount. Therefore the applicant has filed this application to set aside Annexure A1 and for a declaration that Annexure A1 memorandum dated 4.1.2002 of the 1st respondent is illegal and void and to pass any other order or direction. It is alleged in the application that the finding of the respondents that Narakkal and Ambalamedu are contiguous is wrong, that these two places are separated by about 34 km with intermittent backwaters, Municipality and Panchayaths, and that in any case the order having been passed without proper consideration, the same is liable to be set aside.

2. The respondents 1&2 in the reply statement contend that in view of the provisions contained in Rule 5(c)(iii) of the conditions for drawal of House Rent Allowance prescribed in the Part V of FR&SR - HRA&CCA(Swamy's Compilation), the applicant whose spouse was allotted a Quarter within the Urban Agglomeration of Cochin City was not entitled to draw HRA and therefore he is liable to refund the amount wrongly drawn by him.

3. We have heard the counsel on either side. The learned counsel for the applicant argued that before taking Annexure A1 decision, the 1st respondent has not applied its mind to rival contentions after giving the applicant an opportunity to show cause against the decision to recover an amount of Rs.96,708/and therefore the order is liable to be set aside for nonobservance of the principles of natural justice. He further argued that as Narakkal is situated about 34 km away from Ambalamedu and it is intercepted by Panchayaths, Municipalities and backwaters, it




would not be possible for the applicant to reside in the Quarter allotted to his spouse at Ambalamedu and to perform the duties in the Krishi Vigyan Kendra at Narakkal.

4. The learned counsel for the respondents on the other hand argued that according to rules, a Government servant shall not be entitled to House Rent Allowance if his spouse has been allotted accommodation at the same station by the Central/State Government, Autonomous Public Undertaking or Semi Government Organisation etc., whether he/she resided in that accommodation or he/she resides separately in accommodation rented by him/her, the applicant should not have drawn HRA for the period although he had not occupied the Quarter and that he having made representation on 25.1.2002, the contention that the impugned order was issued without observing the principles of natural justice has no force, argued the counsel.

5. I have heard the learned counsel on either side and considered the facts and circumstances of the case and perused the documents placed on record.

6. In Annexure A1 there is a unilateral decision taken to recover an amount of Rs.96,708/- and the applicant has been directed to remit the amount. The fact remains that before taking decision to recover a sum of Rs.96,708/- from the applicant, he has not been given an opportunity to show cause against the proposal. True the applicant sent a reply denying the liability but the applicant has stated that it would not be possible for him to perform his duties in the Krishi Vigyan Kendra at Narakkal while residing in the Quarters allotted to his spouse at Ambalamedu. If a notice was given before taking the decision contained in Annexure A1, the applicant would have persuaded the 1st respondent to take a different decision. This



opportunity had not been given to the applicant. The decision contained in Annexure A1 therefore is void for nonobservance of the principles of natural justice. For that reason alone the impugned order is liable to be set aside. In view of the above finding, I am not going to the other merits of the case.

7. In the light of what is stated above, the impugned order Annexure A1 is set aside for nonobservance of the principles of natural justice. It is made clear that if the respondents find that it is necessary to recover an amount of Rs.96,708/- or any amount from the applicant on the basis of the rules and instructions on the subject, it is open to the respondents to take steps in that regard after giving the applicant a reasonable opportunity to show cause against that proposal. No costs.

Dated 19th February, 2003.



A.V. HARIDASAN
VICE CHAIRMAN

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